

# **EXHIBIT A**

1 TODD W. BURNS  
California State Bar No. 194937  
2 FEDERAL DEFENDERS OF SAN DIEGO, INC.  
225 Broadway, Suite 900  
3 San Diego, California 92101-5008  
Telephone No. (619) 234-8467  
4

5 Attorneys for Mr. Cruz  
6  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 (HONORABLE JANIS L. SAMMARTINO)

11 UNITED STATES OF AMERICA, )

12 Plaintiff, )

13 v. )

14 DANIEL CRUZ-ESCOBAR, )

15 Defendant. )  
16

**DECLARATION OF  
TODD W. BURNS**

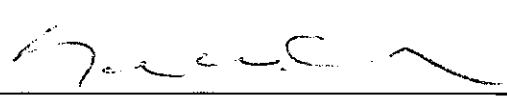
17 I, Todd W. Burns, declare, under penalty of perjury:

18 1. I am counsel for Defendant Daniel Cruz-Escobar, with respect to the above-captioned case.

19 2. I wrote the memorandum of points and authorities in support of Mr. Cruz's pre-trial motions,  
20 which is to be filed June 6, 2008.

21 3. In that memorandum, the background facts regarding the Rule 5.1 and discovery motions are  
22 based on my personal knowledge, and I believe those facts to be accurate.

23 I declare under penalty of perjury that the foregoing is true and correct. This document was executed  
24 on June 6, 2008, in San Diego, California.

25   
TODD W. BURNS  
26  
27  
28

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES OF AMERICA**

**WAIVER OF INDICTMENT**

**V.**

**DANIEL CRUZ-ESCOBAR**

**CASE NUMBER: \_\_\_\_\_**

**I, Daniel Cruz-Escobar, the above named defendant, who is accused of committing the following offense"**

**Title 18, U.S.C., Sec. 922(g)(5) - Alien Unlawfully in Possession of Ammunition,**  
**being advised of the nature of the charge, the proposed information, and of my rights,**  
**hereby waive in open court on May 15, 2008, prosecution by indictment and consent that**  
**the proceeding may be by information rather than by indictment.**



**Defendant**



**Counsel for Defendant**

**Before \_\_\_\_\_**  
**JUDICIAL OFFICER**

# EXHIBIT C



UNITED STATES ATTORNEY'S OFFICE

SOUTHERN DISTRICT OF CALIFORNIA

San Diego County Office  
880 Front Street, Rm 6293  
San Diego, CA 92101-8893

Imperial County Office  
321 So. Waterman Avenue  
Rm 204  
El Centro, CA 92243-2215

# FACSIMILE COVER SHEET

TRANSMITTED BY:		STEPHANIE DELGADILLO		TIME:	
				DATE	May 14, 2008
TO:	TODD BURNS				
ORGANIZATION:	FEDERAL DEFENDERS OF SAN DIEGO, INC.				
PHONE NUMBER:	(619)	FAX NUMBER:	(619) 687-2666		
NUMBER OF PAGES (including this cover sheet): 3					
COMMENTS:					
FROM:	RANDY K. JONES, AUSA				
SECTION:	UNITED STATES ATTORNEY'S OFFICE, GENERAL CRIMES				
PHONE NUMBER: (619) 557-5684			FAX NUMBER: (619) 235-2757		
NOTE: If you do not receive the total number of pages indicated above, please call the individual listed above.					
IMPORTANT: If this fax was erroneously sent to your fax number, please contact sending individual immediately.					

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

January 2007 Grand Jury

UNITED STATES OF AMERICA, ) Criminal Case No. \_\_\_\_\_  
 )  
Plaintiff, ) I N F O R M A T I O N  
 )  
v. ) Title 18, U.S.C.,  
 ) Secs. 922(g)(5)(B) and  
DANIEL CRUZ-ESCOBAR, ) 924(a)(2) - Alien in  
 ) Possession of Ammunition  
Defendant. )  
\_\_\_\_\_ )

The United States Attorney charges:

On or about April 29, 2008, within the Southern District of California, defendant DANIEL CRUZ-ESCOBAR, an non-immigrant alien in the United States, did knowingly and unlawfully possess, in and affecting commerce, ammunition, that is, two boxes of Winchester 12 gauge shotgun ammunition; all in violation of Title 18, United States Code, Sections 922(g)(5)(B) and 924(a)(2).

DATED: \_\_\_\_\_

KAREN P. HEWITT  
United States Attorney

RANDY K. JONES  
Assistant U.S. Attorney

AO 455(Rev. 5/85) Waiver of Indictment

---

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

WAIVER OF INDICTMENT

v.

DANIEL CRUZ-ESCOBAR,

CASE NUMBER:

I, DANIEL CRUZ-ESCOBAR, the above-named defendant, who is accused of Title 18, United States Code, Section 922(g)(5)(B) and 924(a)(2) - Alien in Possession of Ammunition. being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court on \_\_\_\_\_ prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Counsel for Defendant

Before \_\_\_\_\_  
HONORABLE NITA L. STORME



# EXHIBIT D

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA  
3

4 UNITED STATES OF AMERICA, ) Case No. 08MJ1348-NLS  
5 Plaintiff, )  
6 vs. ) Thursday,  
7 DANIEL CRUZ-ESCOBAR, ) May 15, 2008  
8 Defendant. ) 9:30 a.m.  
9 )

10 TRANSCRIPT OF PRELIMINARY HEARING  
11 BEFORE THE HONORABLE NITA L. STORMES  
12 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: CHARLOTTE KAISER, ESQ.  
14 Assistant United States  
15 Attorney  
880 Front Street  
San Diego, California 92101

16 For the Defendant: FEDERAL DEFENDERS OF SAN  
17 DIEGO, BY: TODD W. BURNS, ESQ.  
18 225 Broadway, Suite 900  
San Diego, California 92101

19 Transcript Ordered by: TODD W. BURNS, ESQ.  
20

21 Transcriber: Leslie Kychik  
22 Echo Reporting, Inc.  
6336 Greenwich Drive, Suite B  
23 San Diego, California 92122  
(858) 453-7590

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

1 SAN DIEGO, CALIFORNIA THURSDAY, MAY 15, 2008 9:30 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Ms. Kaiser, are you familiar with  
5 number five on the calendar, Daniel Cruz-Escobar?

6 MS. KAISER: Your Honor, I partially spoke with  
7 the AUSA on the matter. My understanding is that he would  
8 be requesting a continuance as there seems to be some  
9 confusion as to whether this was supposed to be a time  
10 waiver or waiver of indictment.

11 THE COURT: Are you prepared to stand in for him  
12 on that matter?

13 MS. KAISER: If your Honor wishes me to do so.

14 THE COURT: It's not whether I wish. It's whether  
15 you're prepared to do it.

16 MS. KAISER: Yes, your Honor.

17 THE COURT: All right. Call number five please.

18 THE CLERK: Calling matter number five off  
19 calendar, case number 08MJ1348-NLS United States versus  
20 Daniel Cruz-Escobar also on calendar for a preliminary  
21 hearing.

22 MR. BURNS: Good morning, your Honor. Todd Burns  
23 Public Defender on behalf of Mr. Cruz.

24 THE COURT: Good morning. All right. This matter  
25 was on for a preliminary hearing today albeit I was advised

1 prior to court that this individual was going to --

2 UNIDENTIFIED SPEAKER: I'm sorry which --

3 THE COURT: Number five, Mr. Cruz-Escobar. The  
4 Court was advised that this individual was going to waive  
5 indictment this morning and plead to an information. Is  
6 that correct, counsel?

7 MS. KAISER: No, your Honor. My understanding is  
8 the government's position is that it was supposed to be a  
9 time waiver. That is what was represented to the  
10 government. That is the government's understanding.

11 MR. BURNS: Your Honor, I don't know how there  
12 could have been miscommunication on this matter. I made it  
13 quite clear to Mr. Jones that I wanted this case to proceed  
14 quickly because there were some circumstances by which I  
15 wanted to get in front of a district judge and if we were  
16 going to enter into an agreement, ask for immediate  
17 sentencing which the government did agree that whatever  
18 offer was made by the government that they would not oppose  
19 and would agree to request for immediate sentencing.

20 I made it clear that I also wanted to not waive  
21 time today and extend things a couple of weeks given the  
22 same circumstances. I made it clear that he would waive  
23 indictment today to keep open the options of potentially  
24 working out a deal to save the government time from getting  
25 the indictment. I actually asked Mr. Jones even though

1 there wasn't a plea agreement to send me the waiver of  
2 indictment and the information, which he did. I had my  
3 client sign the waiver of indictment, was prepared to waive  
4 indictment today.

5 I don't know how Mr. Jones is confused but now  
6 he's come in here and I said look, "I've got a waiver of  
7 indictment. Waive indictment, get information, keep the  
8 options open, decide where we're going from here." He said  
9 he doesn't want to do that. He wants to go get an  
10 indictment. That's Mr. Jones' choice. In having made this  
11 choice and this being the 10th day from the initial  
12 appearance and apparently not being ready for preliminary  
13 hearing I move to dismiss.

14 THE COURT: Well, the Court is not going to  
15 dismiss this case in the absence of Mr. Jones. It appears  
16 to be that there was, in fact, a miscommunication of  
17 counsel. Today is Thursday the 15th. I'm going to continue  
18 this matter to my calendar for preliminary hearing on next  
19 Tuesday, which will be the 20th, and I find that  
20 extraordinary circumstances exist and justice requires the  
21 delay based on a miscommunication of counsel as to whether  
22 this individual was going to waive indictment and plead to  
23 an information or waive time. That will be the basis of my  
24 ruling and this matter will be set on my calendar next  
25 Tuesday morning at 9:30.

1 MR. BURNS: I note Mr. Cruz's objection, your  
2 Honor.

3 THE COURT: So noted.

4 (Proceedings concluded.)  
5

6 I certify that the foregoing is a correct  
7 transcript from the electronic sound recording of the  
8 proceedings in the above-entitled matter.

9 Bernie Fyehik 5-27-08  
10 Transcriber Date

11 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

12 E.L. Francisco  
13 E.L. Francisco, President  
14 Echo Reporting, Inc.  
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# **EXHIBIT E**

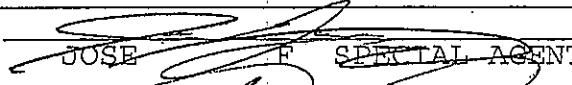
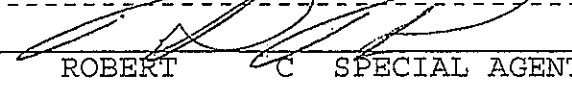
REQUESTED BY: GONZALEZ, JOSE F  
O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE		TECS ACCESS CODE 3	
R E P O R T O F I N V E S T I G A T I O N		PAGE 1	
		CASE NUMBER [REDACTED]	
TITLE: DANIEL CRUZ ESCOBAR			
CASE STATUS: INTERIM RPT			
REPORT DATE 050208	DATE ASSIGNED 043008	PROGRAM CODE YE0	REPORT NO. 001
RELATED CASE NUMBERS:			
COLLATERAL REQ:			
TYPE OF REPORT: OTHER INFORMATION			
TOPIC: CRIMINAL ARREST OF DANIEL CRUZ-ESCOBAR			

## SYNOPSIS:

On April 29, 2008, Daniel CRUZ-Escobar was arrested at the San Ysidro Port of Entry for possession of ammunition. Ten rounds of Winchester shotgun shells were seized as evidence. CRUZ is an active member of the Mexican military. CRUZ was charged 18 USC 922(g)(5), Alien Unlawfully in Possession of Ammunition. Post-Miranda statements indicate that CRUZ has been engaged in a pattern of smuggling ammunition from the United States to Mexico and reselling it a personal profit.

On April 29, 2008, Daniel CRUZ-Escobar was placed under arrest for violation of Title 18 United States Code 922(g)(5) Alien Unlawfully in Possession of Ammunition. This ROI summarizes the event.

DISTRIBUTION: ASCSY SACSD HQTK	SIGNATURE: GONZALEZ  JOSE F. SPECIAL AGENT	
	APPROVED: RODGERS  ROBERT C. SPECIAL AGENT	
	ORIGIN OFFICE: SY SAN YSIDRO, CA - ASA	TELEPHONE: 619 671 6618
TYPIST: GONZALEZ		

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DEPARTMENT OF HOMELAND SECURITY  
ICE

PAGE 2

R E P O R T O F I N V E S T I G A T I O N  
C O N T I N U A T I O N

CASE NUMBER [REDACTED]

REPORT NUMBER: 001

CASE PROGRAM CODES:

YEO ILLEGAL EXPORTS

6IN BEST - San Diego

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DEPARTMENT OF HOMELAND SECURITY ICE  R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	PAGE 3 CASE NUMBER S [REDACTED] REPORT NUMBER: 001
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## DETAIL OF INVESTIGATION:

On April 29, 2008, Border Patrol Agents from the San Diego Sector Smuggling Interdiction Group were participating in a joint outbound operation with Customs and Border Protection (CBP) Officers assigned to the San Ysidro, California Port of Entry. The purpose of the operation was to intercept firearms, ammunition, money and other contraband being transported out of the United States into the Mexico. Border Patrol agents established an inspection location approximately 50 feet from the entrance into Mexico. Additionally, the location of the inspection point was such that it allowed for only persons intending to exit the United States into Mexico to be encountered.

At approximately 1:10 PM, Border Patrol Agent B. Desrosiers identified an individual, later identified as Daniel CRUZ-Escobar (hereafter referred to as CRUZ), preparing to exit from the United States into Mexico via the pedestrian exit lane located on the western side of the San Ysidro Port of Entry. Agent Desrosiers stated that he observed CRUZ behaving in a suspicious manner. Agent Desrosiers explained that CRUZ was hesitant in approaching the outbound inspection point and on at least two occasions walked towards the inspection area and subsequently declined to exit the United States into Mexico. Agent Desrosiers also stated that he observed the CRUZ stop and look back at the inspection area on several occasions. Agent Desrosiers said that he observed CRUZ speak with unidentified individuals that were loitering in the area. Following CRUZ's conversations with said unidentified individuals CRUZ sat down approximately 40 yards from the inspection area.

At this time, Agent Desrosiers relayed his observations to Supervisory Border Patrol Agent D. Dailey and Border Patrol Agent Blas. Agents Dailey and Blas decided to approach CRUZ, suspecting that CRUZ was involved in smuggling. Agent Dailey identified himself to the CRUZ as a Border Patrol Agent and conducted an immigration inspection. CRUZ stated that he was a citizen of Mexico and presented a valid DSP-150 Laser Visa (Border Crosser card), indicating that he was admitted to the United States as a Non-Immigrant alien. CRUZ was then questioned as to his intended destination. CRUZ stated he was going to Mexico. Agent Dailey then asked CRUZ what was in his bags, to which CRUZ provided no verbal response, only a shoulder shrug. Agent Dailey noticed CRUZ becoming visibly nervous and agitated. Agent Dailey subsequently conducted a pat-down for officer safety reasons. During the pat-down agents discovered two boxes of Winchester 12 gauge shotgun ammunition. The ammunition was discovered concealed in the CRUZ's socks. (Agent note: the ammunition located on CRUZ was manufactured by Winchester in East Alton, Illinois; indicating the ammunition traveled in or affected interstate commerce). Due to the fact that CRUZ already stated his intention to enter

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DEPARTMENT OF HOMELAND SECURITY ICE  R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	PAGE 4 <hr/> CASE NUMBER S [REDACTED] <hr/> REPORT NUMBER: 001
--	--

Mexico, he was placed under arrest for possession of ammunition.

Immigration and Customs Enforcement (ICE) Special Agents J. Gonzalez and J. Pryor, who were also participating in the operation, were informed of the incident. Agents Gonzalez and Pryor reported to the scene to conduct the follow-up investigation. ICE Special Agent Gonzalez immediately advised CRUZ in the Spanish language of his Miranda Rights. CRUZ stated he understood his rights and was willing to answer questions without the presence of an attorney. CRUZ stated that he was in fact attempting to enter Mexico and stated that ammunition found on his possession was his. CRUZ further stated that he was a member of the Mexican military. At this time, Agents Gonzalez and Pryor escorted CRUZ to the San Ysidro Port Entry premises and placed him in an interview room for a more throughout interview.

## STATEMENT OF PRINCIPAL:

On April 29, 2008, at approximately 3:10 PM, a video-recorded statement was taken with Daniel CRUZ-Escobar pursuant to his arrest for violation of Title 18 USC 922(g)(5). The interview was conducted by Special Agent J. Gonzalez and witnessed by Special Agent J. Pryor at the San Ysidro Port of Entry. Special Agent Gonzalez reminded CRUZ he was still under oath and repeated his Miranda rights in the Spanish language. CRUZ once again stated he understood his rights and was willing to answer questions without a lawyer present. Agent Pryor witnessed the issuance of these rights. CRUZ stated he was a citizen and national of Mexico by birth in Santa Cruz, Hidalgo, Mexico. CRUZ stated he currently resides at Palomas 108 3, Colonia Libertad, Tijuana, Baja California, Mexico. CRUZ stated he is currently married and has two children. CRUZ stated he has been enlisted in the Mexican military for the last 28 years. CRUZ stated he is currently a Sergeant and currently is assigned as the head chef for his unit.

CRUZ stated that on April 29, 2008, at approximately 12:15 PM, he entered the United States from Mexico via the San Ysidro Port Entry Pedestrian lanes. CRUZ stated he was admitted to the United States as a Non-Immigrant alien after presenting his lawfully issued DSP-150 Laser Visa (Border Crosser card). CRUZ stated he entered the United States with the intention of purchasing ammunition and some ice cream. CRUZ stated once he entered the United States he immediately proceeded to the location where he purchased two boxes of shotgun ammunition, totaling ten rounds. CRUZ stated he paid five to six dollars per box of ammunition. CRUZ stated he purchased the ammunition from a store named "Progreso". CRUZ described the store as being located near San Ysidro Boulevard. CRUZ stated that after purchasing the ammunition he intended to return to Mexico with the ammunition. CRUZ stated that he hid the ammunition in his socks because he observed the inspection and did not want to be caught.

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O F F I C I A L U S E O N L Y

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R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER: <del>XXXXXXXXXX</del>
	REPORT NUMBER: 001

CRUZ stated he intended to sell the ammunition to associates in Mexico for a profit, to help his family financially. CRUZ stated he was to re-sell each box of shotgun ammunition purchased on April 30, 2008, for ten dollars per box. CRUZ added that he only sells the ammunition to military personnel that work with him. In addition, CRUZ stated he is a member of a Mexican hunting club and therefore claims he also buys ammunition for personal use.

CRUZ was further questioned about his history of ammunition smuggling. CRUZ admitted to having smuggled ammunition from the United States into Mexico on at least 50 previous occasions. Furthermore, CRUZ was questioned about the three receipts found in his baggage. CRUZ identified one receipt as being proof of his purchase of ammunition on April 29, 2008. CRUZ added that the other two receipts were proof of previous ammunition purchases he made, which resulted in the ammunition being smuggled from the United States into Mexico.

Agents questioned CRUZ about other documents found in CRUZ's baggage, which appeared to be a price lists for various types of ammunition. CRUZ stated that the documents were in fact price lists for the various types of ammunition he acquired. CRUZ admitted he used this document as a price reference. CRUZ further explained that the price list was the cost of the ammunition with his (CRUZ's) profit included.

CRUZ admitted that he knew it was illegal for a non-immigrant alien to possess a firearm and/or ammunition in the United States. CRUZ also stated that he knew it was illegal to export ammunition from the United States. Moreover, the CRUZ admitted that he did not possess a license to export ammunition as required by law. Additionally, CRUZ admitted he was not on official government business when attempting to export the ammunition from the United States. CRUZ was then asked if he was permitted by Mexican law to possess ammunition while in Mexico, to which he replied "no."

Lastly, CRUZ was asked if he wanted Agents to notify the Mexican consulate regarding his arrest. CRUZ responded "yes". (Agent note: Agents Gonzalez notified the Mexican consulate of CRUZ arrest via fax on April 30, 2008). The interview was concluded at 4:09 PM.

#### DEFENDENT BIOGRAPHICAL DATA:

NAME: Daniel CRUZ-Escobar  
 DOB: 6/10/1963  
 ARN: 088383926  
 FBI: 571609WC9  
 SID: None

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DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 6
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER [REDACTED]
	REPORT NUMBER: 001

FINS: [REDACTED]

## EVIDENCE:

The following items were seized as evidence:

- Ten rounds of Winchester 12 gauge shotgun ammunition.
- Ledgers with price list for various types of ammunition.
- Three receipts demonstrating the purchase of ammunition.
- Various other documents indicating involvement with firearms businesses and purchases;

## DISPOSITION:

Daniel CRUZ-Escobar was placed under arrest for violation of Title 18 United States Code 922(g)(5) Alien Unlawfully in Possession of Ammunition. CRUZ was transferred into the custody of the United States Marshals Service pending criminal prosecution.. CRUZ's status as a Border Crosser will be revoked and Cruz will be placed into removal proceedings following completion of his criminal arrest.

All seized items will be held as evidence by ICE DSAC San Ysidro.

## WITNESS LIST:

Immigration and Custom Enforcement (ICE)

- SA Jose Gonzalez
- SA Jeffrey Pryor

United States Border Patrol-Smuggling Interdiction Group

- SBPA D. Dailey
- BPA B. Desrosiers
- BPA E. Blass

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# **EXHIBIT F**

**BORDER PATROL  
REPORT OF APPREHENSION OR SEIZURE**

Office or Agency CHIEF PATROL AGENT U. S. BORDER PATROL SAN DIEGO SECTOR 2411 BOSWELL ROAD CHULA VISTA, CA, 91914	File Case No. [REDACTED]
	Sector
	Date 04/29/2008

Patrol Agents DAVID DAILEY of the SAN DIEGO station

☐ assisted the \_\_\_\_\_ (Agency) \_\_\_\_\_ (City and State)

in the apprehension and seizure of the following:

☒ apprehended/interviewed:

Name (Surname in CAPS)	First	Middle	Date and Place of Birth
CRUZ-Escobar, Daniel			06/10/1963 MEXICO
Address of person apprehended/interviewed			Nationality MEXICO

☒ and seized/recovered **VESSEL, VEHICLE OR AIRCRAFT**

Description (Year, Make Model, Color)	Motor or Serial No.	Registry or License No.	Value (Est.)

**CONTRABAND, MERCHANDISE OR OTHER**

Quantity	Description	Value (Est.)
10.000 ROUND	SHOTGUN CALIBER 12 GAUGE - 10 rounds of Winchester Buckshot	\$20.00

Place of Apprehension or Seizure West Pedestrian Exit to Mexico	Date and Hour 04/29/2008 1330	Offense Title 8 USC 922(G) (5) Alien In Possession Of Ammunition
--	----------------------------------	--

**NARRATIVE:** (Include Circumstances of apprehension and seizure and facts to which apprehending officers can testify.)

... (CONTINUED ON I-831)

DAVID DAILEY

  
Signature of Reporting Officer

Details regarding "HOLD" placed

Received above persons and items:

GONZALEZ, JOSE  
SPECIAL AGENT

Signature and Title  
IMMIGRATION & CUSTOMS ENFORCEMENT

Office or Agency


04/29/2008

Date



U.S. Department of Homeland Security

Continuation Page for Form 144

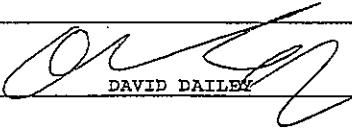
Alien's Name	File Number	Date
CRUZ-Escobar, Daniel	Event No. [REDACTED]	04/29/2008
Narrative Title: Report of Apprehension or Seizure		
<p>On April 29, 2008, Border Patrol Agents from the San Diego Sector Smuggling Interdiction Group were participating in a joint southbound operation with Customs and Border Protection Inspectors assigned to the San Ysidro, California Port of Entry. The purpose of the operation was to intercept firearms, money or other contraband being transported out of the country. Agents were set up near the pedestrian turnstiles to Mexico located on the west side of the Port of Entry. Most Agents were dressed in police vests with exposed badges. Border Patrol Agents B. Desrosiers and E. Blas were dressed in plainclothes and positioned north the pedestrian walkway observing approaching individuals and their reactions to the presence of uniformed Agents conducting southbound operations.</p> <p>At approximately 1:10 p.m., Agent Desrosiers observed a Hispanic male subject carrying two white bags and a child's backpack. This subject, later identified as Daniel CRUZ-Escobar, was walking northbound from the west side of the Port of Entry turnaround located on Camiones Way. Agent Desrosiers observed him make several head turns back towards the area of where uniformed Agents were working. CRUZ walked for approximately forty yards and sat on a bench.</p> <p>Agent Desrosiers continued to observe CRUZ and for the next ten minutes he looked over his shoulder towards the pedestrian access to Mexico numerous times. CRUZ's demeanor seemed nervous and Agent Desrosiers observed him converse with an unknown male who had been also frequenting the area (not crossing and moving about). After about ten minutes, CRUZ stood up and walked hesitantly towards the pedestrian crosswalk (east to west) that led to a sidewalk providing access to the pedestrian lane. After crossing the street, CRUZ walked approximately twenty yards south and made an abrupt turn back towards the direction he came. CRUZ did not return to the pedestrian crossing lane and instead walked towards Agent D Desrosiers through an area with a no pedestrian sign.</p> <p>After passing Agent Desrosiers, CRUZ made several head turns and appeared to be surveying his surroundings. Agent Desrosiers then watch CRUZ return to the bench he was previously seated on. Within minutes, CRUZ stood up and walked southbound approximately forty yards where he looked towards the pedestrian lanes and hesitated again. Agent Desrosiers observed CRUZ speak with another unidentified male that was also frequenting the area (not crossing and moving about). After speaking with second unidentified man, CRUZ walked back to his seat and sat down again. Agent Desrosiers observed that CRUZ seemed more apprehensive and very uncomfortable. Based on his observations and Agent Desrosiers' belief that CRUZ' interactions with the two unidentified males could involve some type of smuggling activity, Agent Desrosiers notified Supervisory Border Patrol Agent David Dailey of his observations.</p> <p>SBPA Dailey and BPA Blas approached CRUZ and identified themselves in the English and Spanish language. The agents questioned CRUZ as to his citizenship. CRUZ stated that he was a citizen and national of Mexico. Agent Blas asked CRUZ to show them his immigration documents. CRUZ presented a valid B1/B2 Border Crossing Card in his name. Agent Dailey asked where CRUZ was going, he stated Mexico. Agent Blas asked why he was waiting to enter Mexico, CRUZ gave an evasive answer, and then stated that he stated he was waiting for a friend. Agent Dailey asked what was in his bags, he shrugged. Agent Dailey asked to look, CRUZ agreed. The two white plastic grocery bags contained two boxes of ice cream bars each. The children's backpack contained nothing. Agent Dailey noticed that CRUZ was becoming v visibly nervous and agitated, he told CRUZ to stand up and put his hands against the wall for a Terry Frisk, for officer safety. CRUZ immediately became stiff and rigid; at that point, ... (CONTINUED ON NEXT PAGE)</p>		
Signature	Title	
 DAVID DAILEY	SUPERVISORY BORDER PATROL AGENT	

2 of 3 Pages



U.S. Department of Homeland Security

Continuation Page for Form I-44

Alien's Name	File Number	Date
CRUZ-Escobar, Daniel	Event No: [REDACTED]	04/29/2008
<p>Agent Dailey placed CRUZ in handcuffs for safety. A search of CRUZ revealed two boxes of Winchester 12 gauge buckshot, 5 per box, one box per sock. Due to the fact that CRUZ had already stated that he was going to Mexico, and he was in possession of ammunition, he was placed under arrest.</p> <p>He was turned over to Immigration and Customs Enforcement Special Agents Jeffrey Pryor and Jose Gonzalez for processing.</p>		
Signature	Title	
 DAVID DAILEY	SUPERVISORY BORDER PATROL AGENT	

3 of 3 Pages

# EXHIBIT G

TODD W. BURNS  
California State Bar No. 194937  
FEDERAL DEFENDERS OF SAN DIEGO, INC.  
225 Broadway, Suite 900  
San Diego, California 92101-5008  
Telephone No. (619) 234-8467

Attorneys for Mr. Cruz

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(HONORABLE JANIS L. SAMMARTINO)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL CRUZ-ESCOBAR,

Defendant.

**DECLARATION OF DANIEL  
CRUZ-ESCOBAR**

I, Daniel Cruz-Escobar, declare, under penalty of perjury:


1. I am the defendant in the above-captioned case.

2. When I was first confronted by two Border Patrol agents on April 29, 2008, near the San Ysidro border crossing, I was cooperative, and I remained cooperative throughout the whole time I interacted with them. I don't believe I acted unusually nervously, or in a manner different from how a normal person would act if confronted and questioned by two law enforcement officers. I did nothing the agents could construe as threatening, nor was there anything about my appearance, how I was sitting, the surroundings, or the like, that agents could construe as threatening.

3. On April 29, 2008, when I was told I had a right to remain silent, a right to have an attorney, and the related rights, I was confused about those rights. I have not had any prior experience with the criminal justice system (in the United States or in Mexico), nor had I ever heard, or heard of, those rights before. I did not understand that I could refuse to answer the agents' questions. Also, I did not understand that I could

1 speak to a lawyer, and have the lawyer assist me, before, and when, I spoke with the agents who questioned  
2 me. In addition, I was very confused about the idea of being given an "appointed" lawyer; I thought that the  
3 agents were saying I could talk to their lawyer, and I could not understand why that would be helpful.

4 I declare under penalty of perjury that the foregoing is true and correct. This document was executed  
5 on June 6, 2008, in San Diego, California.

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8 DANIEL CRUZ-ESCOBAR  
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# EXHIBIT H

**U.S. District Court  
Southern District of California (San Diego)  
CRIMINAL DOCKET FOR CASE #: 3:08-cr-01604-JLS-1**

Case title: USA v. Cruz-Escobar  
Magistrate judge case number: 3:08-mj-01348-NLS

Date Filed: 05/15/2008

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Assigned to: Judge Janis L. Sammartino

**Defendant (1)**

**Daniel Cruz-Escobar**

represented by **Todd W Burns**  
Federal Defenders of San Diego  
225 Broadway  
Suite 900  
San Diego, CA 92101-5030  
(619)234-8467  
Fax: (619)687-2666  
Email: todd\_burns@fd.org  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Designation: Public Defender or Community*  
*Defender Appointment*

**Pending Counts**

18:922(g)(5)(B) and 924(a)(2) - Alien in  
Possession of Ammunition  
(1)

**Disposition**

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**Complaints**

18:922(g)(5) - Alien Unlawfully in  
Possession of Ammunition

**Disposition**

**Plaintiff****USA**represented by **U S Attorney CR**U S Attorneys Office Southern District of  
California

880 Front Street

Room 6293

San Diego, CA 92101

(619)557-5610

Fax: (619)557-5917

Email: Efile.dkt.gc2@usdoj.gov

*TERMINATED: 06/02/2008**LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: Assistant United States Attorney***Randy K Jones**U S Attorneys Office Southern District of  
California

880 Front Street

Room 6293

San Diego, CA 92101

(619)557-5610

Fax: (619)557-7381

Email: Randy.Jones2@usdoj.gov

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: Assistant United States Attorney*

Date Filed	#	Docket Text
04/29/2008		Arrest of Daniel Cruz-Escobar on 4/29/2008. (cap) [3:08-mj-01348-NLS] (Entered: 05/01/2008)
04/30/2008	<u>1</u>	COMPLAINT as to Daniel Cruz-Escobar (1). (jjh) (av1). [3:08-mj-01348-NLS] (Entered: 04/30/2008)
04/30/2008	<u>2</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Status Conference re Initial Appearance as to Daniel Cruz-Escobar (N/B) held on 4/30/2008. ( Initial Appearance continued to 5/1/2008 01:30 PM in Courtroom F before Magistrate Judge Nita L. Stormes.) (Tape #NLS08:15:08-15:15).(Plaintiff Attorney Charlotte Kaiser, AUSA). (Defendant Attorney Carey Gordon, FD-SA) (cap) (mam). [3:08-mj-01348-NLS] (Entered: 05/01/2008)
05/01/2008	<u>3</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Initial Appearance on complaint as to Daniel Cruz-Escobar (1) held on 5/1/2008. Federal Defenders appointed for Daniel Cruz-Escobar (1). Bond set as to Daniel Cruz-Escobar (1) \$30,000 C/CS. Financial Affidavit submitted. ( Preliminary Hearing set for 5/15/2008 09:30 AM in Courtroom F before Magistrate Judge Nita L. Stormes.) (Tape #NLS08 - 14:09-14:39). (Plaintiff Attorney Charlotte Kaiser; AUSA).(Defendant Attorney Candis Mitchell, FD-S/A). (jjh) [3:08-mj-01348-NLS] (Entered: 05/02/2008)
05/01/2008	<u>4</u>	ORDER Setting Conditions of Release. Bond set for Daniel Cruz-Escobar (1) \$30,000 C/CS.

		Signed by Magistrate Judge Nita L. Stormes on 5/1/2008. (cap) [3:08-mj-01348-NLS] (Entered: 05/02/2008)
05/01/2008	<u>5</u>	CJA 23 Financial Affidavit by Daniel Cruz-Escobar. (cap) [3:08-mj-01348-NLS] (Entered: 05/02/2008)
05/02/2008	<u>8</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Status Conference re Motion to Preserve Evidence as to Daniel Cruz-Escobar held on 5/2/2008. Defense Counsel's oral motion to preserve evidence. Court advises defense counsel that a written motion is required to be submitted with specifics as to what evidence in regards to the videotapes from the Dft's detainment at the U.S. Port of Entry - Date, time, place and exactly what is asked for. (Tape #NLS08-15:22-15:25). (Plaintiff Attorney Charlotte Kaiser, AUSA). (Defendant Attorney Shaffy Moeel, FD - S/A). (jcj) [3:08-mj-01348-NLS] (Entered: 05/05/2008)
05/05/2008	<u>6</u>	NOTICE OF ATTORNEY APPEARANCE: Todd W Burns appearing for Daniel Cruz-Escobar (Burns, Todd)(mam). [3:08-mj-01348-NLS] (Entered: 05/05/2008)
05/05/2008	<u>7</u>	MOTION to Preserve Evidence by Daniel Cruz-Escobar. (Burns, Todd) (mam). [3:08-mj-01348-NLS] (Entered: 05/05/2008)
05/07/2008	<u>9</u>	ORDER granting <u>7</u> Motion to Preserve Evidence as to Daniel Cruz-Escobar (1). It is ordered that the Government preserve any audio or video recordings relating to the Defendant's arrest on April 29, 2008. Signed by Magistrate Judge Nita L. Stormes on 5/07/08. (jjh) [3:08-mj-01348-NLS] (Entered: 05/09/2008)
05/15/2008	<u>10</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Preliminary Hearing as to Daniel Cruz-Escobar held on 5/15/2008 and cont to 5/20/2008 09:30 AM in Courtroom F before Magistrate Judge Nita L. Stormes. (Tape #NLS08-01-10:40-10:49). (Plaintiff Attorney AUSA Charlotte Kaiser). (Defendant Attorney Todd W. Burns FD). (mjm) [3:08-mj-01348-NLS] (Entered: 05/15/2008)
05/15/2008	<u>11</u>	INDICTMENT as to Daniel Cruz-Escobar (1) count(s) 1. (rmm) (jcj). (Entered: 05/16/2008)
05/20/2008	<u>12</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Initial Appearance on the Indictment as to Daniel Cruz-Escobar held on 5/20/2008. Arraignment as to Daniel Cruz-Escobar (1) to Count 1 of the Indictment held on 5/20/2008. Not Guilty plea entered. Motion Hearing/Trial Setting set for 6/13/2008 01:30 PM in Courtroom 06 before Judge Janis L. Sammartino. (Tape #NLS08-9:33 to 9:35) (Plaintiff Attorney Charlotte Kaiser, AUSA) (Defendant Attorney Todd W. Burns, FD). (gep) (Entered: 05/20/2008)
05/28/2008	<u>13</u>	Minute Entry : On Court's own motion, Motion Hearing/Trial Setting reset from 6/13/08 to <b>6/20/2008 01:30 PM</b> before Judge Janis L. Sammartino (acr) (Entered: 05/28/2008)
05/28/2008	<u>14</u>	TRANSCRIPT (Preliminary Hearing) of Proceedings as to Daniel Cruz-Escobar held on 5/15/2008, before Judge Nita L. Stormes. Court Reporter/Transcriber: Echo Reporting. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 6/16/2008. Redacted Transcript Deadline set for 6/25/2008. Release of Transcript Restriction set for 8/25/2008. (leh) (Entered: 05/28/2008)



06/02/2008	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE Randy K Jones appearing for USA. (Jones, Randy) (mkz). (Entered: 06/02/2008)
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PACER Service Center			
Transaction Receipt			
06/06/2008 12:39:48			
PACER Login:	us2256	Client Code:	
Description:	Docket Report	Search Criteria:	3:08-cr-01604-JLS
Billable Pages:	2	Cost:	0.16

# EXHIBIT I

**COPY**

**FEDERAL  
DEFENDERS  
OF  
SAN DIEGO,  
INC.**

May 2, 2008

**VIA FACSIMILE AND U.S. MAIL**

Charlotte Kaiser  
Assistant United States Attorney  
Federal Office Building  
880 Front Street  
San Diego, California 92101

**Re: United States v. Daniel Cruz-Escobar  
Case No. 08MJ1348**

The Federal Community  
Defender Organization  
for the Southern  
District of California

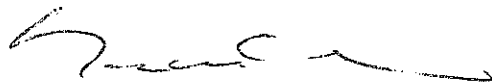
Dear Ms. Kaiser:

I am writing regarding the above-named case. I am writing to you because I understand you appeared for the government at Mr. Cruz's initial court appearance.

Mr. Cruz was arrested at the San Ysidro Port of Entry on April 29, 2008, around the area where pedestrians enter Mexico. I believe there are surveillance cameras in that area, and I anticipate the events surrounding Mr. Cruz's arrest will be the subject of a suppression motion. Accordingly, I request you preserve all relevant evidence, including any video recording of the events surrounding Mr. Cruz's seizure. I request you act immediately in this regard, as I know that such recordings are often destroyed.

Please call me if you have any questions.

Sincerely,



TODD W. BURNS  
Attorney for Mr. Cruz-Escobar

NBC Building  
225 Broadway  
Suite 900  
San Diego,  
California  
92101-5030  
(619) 234-8467  
FAX (619) 687-2666

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\*\*\* TX REPORT \*\*\*  
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OF  
SAN DIEGO  
INC.

The Federal Community  
Defender Organization  
for the Southern  
District of California

## FAX TRANSMITTAL

TO:	<u>Charles H. Kaiser</u>	Date: <u>5/2/2008</u> <u>May 2</u>
Fax #:	<u>235-4716</u>	Tel #:
RE:	<u>US II Dennis/ Amy Escobar</u>	
FROM:	<u>Todd W. Burn</u>	
# of Pages (including cover sheet):	<u>2</u>	
Please call: <u>(619) 234-8467</u> Ext. # <u>3721</u> should there be any problem in the transmission of this fax.		

## COMMENTS

Letter Dated 5/2/08  
hard copy to follow

## CONFIDENTIALITY NOTE

The documents accompanying this telecopy transmission contain information from FEDERAL DEFENDERS OF SAN DIEGO, INC. which is confidential or privileged. The information is intended to be for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the

**FEDERAL  
DEFENDERS  
OF  
SAN DIEGO,  
INC.**

May 15, 2008

**VIA FACSIMILE AND U.S. MAIL**

Randy Jones  
Assistant United States Attorney  
Federal Office Building  
880 Front Street  
San Diego, California 92101

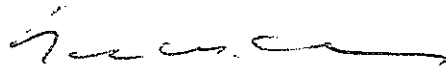
**Re: United States v. Daniel Cruz-Escobar  
Case No. 08MJ1348**

The Federal Community  
Defender Organization  
for the Southern  
District of California

Dear Mr. Jones:

I write to request all discoverable material in the above-named case. This includes any materials or information relating to Mr. Cruz's arrest, including video and audio tapes of the seizure and arrest. As for the latter, a request to preserve such evidence was made in a letter to Charlotte Kaiser dated May 2, 2008, and in court that same day. Magistrate Judge Stormes subsequently entered an order requiring such preservation. Thus, I assume the government took prudent steps to preserve such evidence.

Sincerely,



TODD W. BURNS  
Attorney for Mr. Cruz-Escobar

NBC Building  
225 Broadway  
Suite 900  
San Diego,  
California  
92101-5030  
(619) 234-8467  
FAX (619) 687-2666

FEDERAL  
DEFENDERS  
OF  
SAN DIEGO,  
INC.

May 23, 2008

VIA FACSIMILE AND U.S. MAIL

Randy Jones  
Assistant United States Attorney  
Federal Office Building  
880 Front Street  
San Diego, California 92101

Re: United States v. Daniel Cruz-Escobar  
Case No. 08MJ1348

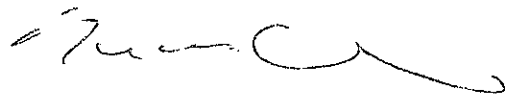
The Federal Community  
Defender Organization  
for the Southern  
District of California

Dear Mr. Jones:

I write again to request production of all discoverable material in the above-named case, particularly video and audio tapes of the seizure and arrest. In addition, I request a map indicating where the arrest occurred, as I plan to visit the cite at the port of entry, and the reports so far provided don't make clear to me the exact arrest location. A copy of one of the overhead photos the government uses in nearly every border-related trial, with an x indicating the arrest site, will suffice (of course, not if the important information is washed-out in a black-and-white photocopy).

Please respond to my request no later than May 26, given that the defense motions are due May 30.

Sincerely,



TODD W. BURNS  
Attorney for Mr. Cruz-Escobar

NBC Building  
225 Broadway  
Suite 900  
San Diego,  
California  
92101-5030  
(619) 234-8467  
FAX (619) 687-2666

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SAN DIEGO,  
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The Federal Community  
Defender Organization  
for the Southern  
District of California

FAX TRANSMITTAL

DATE: May 23, 2008  
TO: RANDY JONES, AUSA  
Fax#: (619) 235.4716  
FROM: TODD W. BURNS  
*Federal Defenders of San Diego, Inc.*  
RE: U.S. v. DANIEL CRUZ-ESCOBAR, 08MJ1348  
# OF  
PAGES: 2 with Cover Sheet

IF PAGES DO NOT TRANSMIT PROPERLY, OR IF YOU HAVE ANY QUESTIONS PLEASE CONTACT  
Todd W. Burns AT (619) 234-8467 ext. 3721.

\*\*\*\*\*

Letter Dated May 23, 2008

HARD COPY TO FOLLOW

**FEDERAL  
DEFENDERS  
OF  
SAN DIEGO,  
INC.**

June 4, 2008

**VIA FACSIMILE AND U.S. MAIL**

Randy Jones  
Assistant United States Attorney  
Federal Office Building  
880 Front Street  
San Diego, California 92101

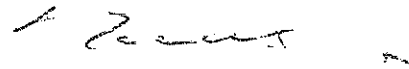
**Re: United States v. Daniel Cruz-Escobar  
Case No. 08MJ1348**

The Federal Community  
Defender Organization  
for the Southern  
District of California

Dear Mr. Jones:

I continue to wait await a reply from you regarding my several discovery requests with respect to the above-named case.

Sincerely,



TODD W. BURNS  
Attorney for Mr. Cruz-Escobar

NBC Building  
225 Broadway  
Suite 900  
San Diego,  
California  
92101-5030  
(619) 234-8467  
FAX (619) 687-2666



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\*\*\* TX REPORT \*\*\*  
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DEFENDERS  
OF  
SAN DIEGO,  
INC.

The Federal Community  
Defender Organization  
for the Southern  
District of California

FAX TRANSMITTAL

DATE: June 4, 2008  
TO: RANDY JONES, AUSA  
Fax#: (619) 235.4716  
FROM: TODD W. BURNS  
*Federal Defenders of San Diego, Inc.*  
RE: U.S. v. DANIEL CRUZ-ESCOBAR, 08MJ1348  
# OF  
PAGES: 2 *with Cover Sheet*

IF PAGES DO NOT TRANSMIT PROPERLY, OR IF YOU HAVE ANY QUESTIONS PLEASE CONTACT  
Todd W. Burns AT (619) 234-8467 ext. 3721.

\*\*\*\*\*

Letter Dated June 4, 2008

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